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VIA ECFS
Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135

Dear Ms. Dortch:

Northern Valley Communications, LLC, by counsel, hereby responds to the October 11, 2010 Ex Parte filed by Verizon in the above-captioned docket ("Verizon Ex Parte") as well as the October 13, 2010 report from TEOCO[1] entitled "Traffic Pumping Bleeds CSPs of Billions" (the "TEOCO Report").[2]

I. The Verizon Ex Parte Is Fundamentally Flawed.

The Verizon Ex Parte purports to have been prepared in response to unspecified requests from Commission staff and others to quantify the impact of free conference calling and other services "on the industry and consumers," yet it fails to do either. Verizon's self-serving analysis is simultaneously under-inclusive and over-inclusive and sheds no light on the quantifiable impact that free calling services have on either the industry as a whole or consumers. Verizon's analysis is under-inclusive because it fails to take into consideration or discuss the negative economic effects that LECs experience when Verizon and other IXCs unilaterally withhold payment for switched access services in direct contradiction to long-standing Commission precedent against "self help." On the other hand, Verizon's analysis is over-inclusive because it characterizes any charges billed by LECs for calls terminating to free calling and other services as part of the "annual problem," but does nothing to acknowledge, let alone quantify, the substantial revenue that Verizon and other IXCs receive as a result of terminating their long distance customers' calls to these services. As such, Verizon's "analysis" is nothing

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1 TEOCO is a telecommunications invoice auditor that has aided IXCs, such as Qwest Communications, in identifying and unlawfully withholding access payments from Local Exchange Carriers ("LECs") that provide service to free calling service providers.

2 Available at: http://whitepapers.ccmi.com/WhitepaperSummary.aspx?whitepaper_id=116.

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more than a rehash of its long-stated policy positions and neither responds to the apparent requests from Commission staff nor adds anything new to the Commission's existing record.

Several elements of Verizon's analysis are also fundamentally flawed. First, in order to inflate its calculations, Verizon includes amounts billed by competitive LECs to terminate intraMTA wireless traffic, which is not now, nor ever has been, the subject of any proposed rules issued by the Commission in this docket. Second, Verizon estimates the total charges for those minutes at $66-88 million annually. This equates to a rate of between $0.033 and $0.044 for each minute of traffic, which, while it may reflect the tariffed rate for certain carriers, is inconsistent with the rates Northern Valley charges[3] and the rates that Northern Valley understands Verizon has agreed to pay other LECs for the traffic.[4]

Even Verizon's concession that a third-party with more data may be able to provide a more accurate estimate of the total costs associated with free calling services is misleading. Verizon fails to acknowledge that in order to undertake a thorough study, the third-party would need access not only to information about the amounts *billed* by LECs for switched access services, but would also need to have accurate data about the positive benefits accrued to the IXCs, such as Verizon, for the ability to terminate their customer's calls to these services, including the additional customers that procure profitable unlimited long-distance plans from Verizon and the substantial incremental revenues that Verizon receives from customers that have opted to retain their per-minute long distance plans. This data, which Verizon and every other IXC has repeatedly refused to produce, would be central to any comprehensive economic analysis of the industry-wide impact of free calling services.

Consider, for example, a scenario in which the majority of Verizon's customers subscribe to Verizon's e-Values plan, which charges consumers as much as $0.10/minute for long-distance

[3] On July 7, 2010, in an effort to put an end to the IXC self help, Northern Valley filed a new F.C.C. Tariff that reinforced the fact that Northern Valley's access tariff applies to the calls directed to free calling providers and requires the payment of access fees by the IXCs. Northern Valley set a composite rate of $0.014/MOU for this traffic and the Commission refused to suspend or reject the tariff in response to requests by Sprint and Qwest. Accordingly, the tariff went into effect and was "deemed lawful" on July 23, 2010. Nevertheless, apparently feeling that they are impervious to Commission directives against "self help" and even after admitting that the new tariff would require them to pay for the calls at issue, both Qwest and Sprint continue to withhold payment from Northern Valley just as they have for the past three years.

[4] Verizon's suggestion that its calculation is "roughly consistent" with a "study" conducted by Connectiv Solutions is laughable. Verizon Ex Parte at 1-2 & n. 4. Without analysis or explanation, Connectiv concluded that "traffic pumping" created approximately $190 million in charges each year for the wireless industry alone. In other words, while including only a fraction of the traffic addressed by Verizon's Ex Parte, Connectiv's conclusion is nearly 300% greater than Verizon's already-inflated estimate.

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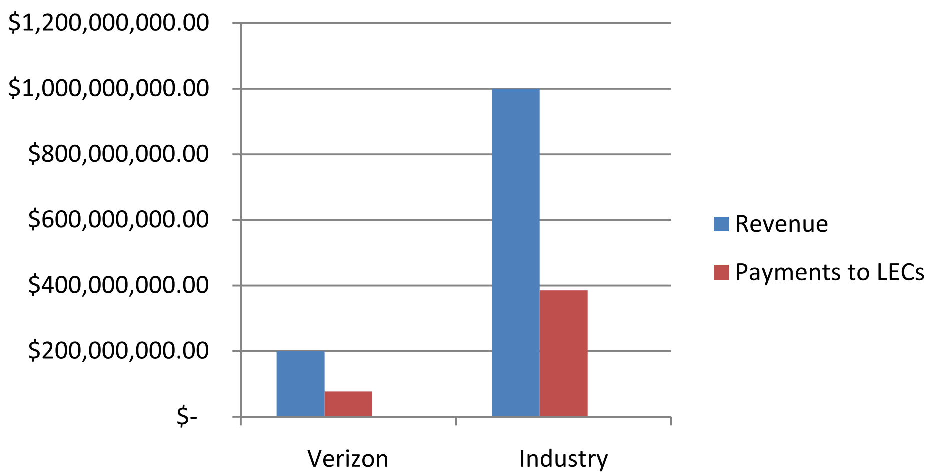
calls.[5] In this instance, according to Verizon's estimates for call volumes, Verizon would generate revenue of $200 million dollars for calls terminating to the free calling services. Therefore, according to Verizon's inflated estimates for the amounts billed by LECs, Verizon would be paying only between $66 and $88 million to LECs for the privilege of generating over $200 million in revenue. Assuming Verizon's estimates were correct, this would still leave Verizon with over 61% of the revenue generated from these calls, or as much as $112 million annually. Similarly, extending these calculations to the industry as a whole, and assuming the accuracy of Verizon's estimates, the free-calling industry would generate approximately $1 billion dollars in revenue for the long-distance carriers, while costing them only $385 million in access fees. Thus, ***creating IXC profits of nearly $615 million each year***.[6]



Verizon also argues that the free calling services result in consumer harm. This argument is absurd and believed by the popularity of free calling services. Indeed, rather than providing any support for this argument, Verizon resorts to a ridiculous analogy to the FCC's recent actions regarding Video Relay Services (VRS). The fundamental distinction between the VRS situation and the free calling services against which Verizon rails, however, is that *Verizon's customers*

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5 *See* https://www22.verizon.com/Residential/Templates/Products/ProductDisplay_Popup.aspx?ShowProduct=Y&showprice=Y&hc_id=7002&state=CA. Northern Valley recognizes that not all of Verizon's customers subscribe to the e-Values plan, however, it is without the information possessed only by Verizon to more accurately analyze the revenues generated by these calls.

6 Though the accuracy of Verizon's estimates is suspect, the example demonstrates that the Commission should be very skeptical of the efforts of Verizon and others to paint themselves as "victims." The reality is, unless the IXCs provide information about their revenues, there is no reasonable basis to conclude that the free calling services actually result in any harm to these carriers. Moreover, the example demonstrates that there is ample room for the Commission to strike a pro-consumer policy that moderates access rates, while allowing consumers to continue to benefit from free calling services

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voluntarily and without remuneration call the free conferencing services and they pay their normal long distance charges to do so. The materials Verizon cites, therefore, are simply inapposite because this is not a situation where the consumer is receiving any more than it is entitled to under its existing long-distance agreement with Verizon and the other IXCs – the long distance calls it pays Verizon for the privilege of making. Indeed, though Verizon is intimately familiar with consumer fraud and artificial charges,[7] there is no record evidence from which to conclude that consumers are being harmed by participating in free conference calling and similar services.

In short, Verizon's latest ex parte does nothing to move the bar towards supporting the IXC's argument that the Commission should engage in hyper-technical regulation of the LEC-end-user relationship. The Commission should reject the repeated invitations to provide IXCs with free use of a LEC's network for delivering calls that the IXC's customers voluntarily make to free calling services. Rather, the Commission should act only to put teeth once again into its long-held policy against the nation's largest telecommunications carriers using their economic brute force to harm competitive carriers by engaging in prohibited "self help."

II. The TEOCO Report is Without Merit.

The TEOCO Report, apparently authored with Qwest's counsel, should be understood for what it is: nothing more than a marketing piece touting TEOCO's efforts to aid and abet the IXCs in their unlawful self help schemes. The TEOCO Report reaches unsupported conclusions about purported "expenses" that have been incurred by the long-distance carriers as a result of free calling and similar services. TEOCO Report at 4-5. Like each of the IXC-sponsored reports and analysis that have come before it, the TEOCO Report fails to provide any underlying data or analysis to support its erroneous conclusions. Most fundamentally, the TEOCO Report wrongly suggests that it is analyzing IXC "expenses" over a five-year period, while ignoring entirely that many of the largest IXCs have simply refused to pay their access bills for several years now. *Id.*

TEOCO also argues that, despite adopting unlimited long distance plans in a regulated industry that charges for originating and terminating traffic on an incremental basis, IXCs should nevertheless be relieved of any responsibility to have their consumer offerings reflect this regulatory reality. TEOCO Report at 6. Rather, TEOCO argues that because the IXCs' customers participate in conference calls that "exceeds the 2.3 minutes US national call

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[7] *See, e.g.*, FCC Confirms Investigation Into Verizon Wireless' Mystery Fees (Oct. 4, 2010), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301874A1.doc; Commissioner Clyburn on Verizon Wireless' Announcement that It Will Give Refunds to Approximately 15 Million Americans (Oct. 4, 2010), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-301887A1.doc (noting that Verizon's initial response to the Commission's inquiries is at odds with its recent revelations that it has inappropriately billed consumers by up to $90 million).

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average," that there is some fundamental flaw not in the unlimited long distance plans, but in the very nature of the free conference calling services. TEOCO's policy analysis, not surprisingly, simply parrots the position of its large IXC clients and ignores the key fact that IXCs have complete control over the long-distance offerings that they make available to consumers. To the extent that their unproven claims of economic loss are indeed true (and there is no such proof), IXCs remain free to modify those plans in order to ensure that consumers pay for the services that they consume and so as to avoid the perceived potential externalities about which TEOCO and their IXC clients complain. Indeed, to the extent that the dire predictions made by the IXCs ever come true (which is highly unlikely given that the fact the companies and their unlimited long-distance plans remain highly profitable even with the free calling services), it will be only as a result of the IXCs' collective refusal to adjust their consumer service offerings to ensure that those consumers that consume the most long-distance services pay their fair share.

In fact, it is worth noting that, while the amount of so-called "traffic pumping" has purportedly been increasing over the past five years, consumer costs have been falling. Thus, the IXCs argument that "traffic pumping" is causing consumer prices to increase is without support. By way of example, the table below depicts the cost of unlimited wireless calling plans when they were introduced in early 2008 vs. the costs today:

	2008 Cost	**2010 Cost**
AT&T	$99.99 for unlimited calls	$69.99 for unlimited calls
Verizon	$99.99 per month unlimited calls; $119.99 for calls and text messages; $139.99 for calls, text messages, web, email and streaming video	$69.99 per month unlimited calls; $89.99 for calls and text messages
Sprint Nextel	$119.99 for unlimited calls, text messages, web, email and picture mail	$99.99 for unlimited calls, text messages, web, email and picture mail
T-Mobile	$99.99 for unlimited calls, text messages, picture messages and instant messages	$49.99 per month unlimited calls; $59.99 for calls and text messages; $79.99 for unlimited calls, text messages, and web browsing

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III. Conclusion

Absent a record of actual costs paid and revenues received by the IXCs, there is no basis upon which the Commission could find that free calling services are harming either IXCs or consumers. As such, the Commission should decline to credit the "analysis" offered by Verizon and TEOCO and should otherwise reinforce its long standing precedent against the largest carriers using their market power to stymie competition in the industry.

Respectfully submitted,

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